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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

42390P10217

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on August 18, 2005

Signature

Typed or printed name Katherine Jennings

Application Number

09/803,082

Filed

August 19, 2005

First Named Inventor

Viswanath Nanjundiah

Art Unit

2135

Examiner

Klimach, Paula W.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

 attorney or agent of record.Registration number 39,926

Signature

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Telephone number

 attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

August 18, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

 *Total of _____ forms are submitted.

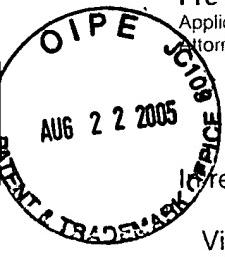
This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Pre-Appeal Brief Request for Review

Application No. 09/803,082

Attorney Docket: 42390.P10217



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Viswanath Nanjundiah

)

Examiner: Klimach, Paula W.

Serial No.: 09/803,082

)

Group Art Unit: 2135

Filed: March 8, 2001

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For: System for Selective Encryption of Data
Packets

)

)

Pre-Appeal Brief Request for Review

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Final Office Action of May 19, 2005, please consider the following pre-appeal brief request for review for the above-identified application.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on:

August 18, 2005

Date of Deposit

Katherine Jennings

Name of Person Mailing Correspondence

Katherine Jennings August 18, 2005

Signature

Date

Pre-Appeal Brief Request for Review

- Application No. 09/803,082
- Attorney Docket: 42390.P10217

All independent claims currently pending are rejected under 35 U.S.C. §103(a). During prosecution, Applicant has consistently argued that the Examiner has failed to provide the necessary motivation to modify Colligan et al (U.S. Patent No: 6,415,031, "Colligan") as needed to support a *prima facie* §103(a) rejection. The Examiner's initial rejection of June 7, 2004 argued modification based on general knowledge available to one of ordinary skill in the art. This argument was dropped in the final Office Action of May 19, 2005 ("final office action") and a secondary reference, Jaendel et al (WO 0031964, "Jaendel"), was cited as providing those elements not disclosed by Colligan.

Examiner and Applicant agree that Colligan fails to disclose "selecting for encryption at least every Nth data packet between consecutive data packets having a sequence header code of a data packet sequence" as recited in independent claims 31, 35, 39, and 43. However, Applicant respectfully asserts that the Examiner has clearly erred in making a *prima facie* §103(a) rejection based on Colligan in view of Jaendel because Jaendel fails to disclose encryption of at least every Nth packet between consecutive data packets having a sequence header code of a data packet sequence as claimed.

To clarify matters, Applicant wishes to draw attention to Applicant's detailed description where selecting for encryption "at least every Nth data packet between consecutive data packets having a sequence header code of a data packet sequence" may comprise the selective encryption of every Nth data packet between the detected presence of the sequence header code (i.e., data packet sequence information) found at the beginning of consecutive I-pictures in an MPEG data packet sequence. (Application; paragraphs 31 and 32). In contrast, Jaendel discloses a "technique for partial encryption and progressive transmission of images where a first section of the image file can be decompressed at reduced quality without decryption, i.e. the first low quality image is not encrypted, and where a second section of the image file is encrypted" (Jaendel; page 3, second full paragraph). Jaendel also discloses that "(t)he image can also be partitioned into multiple sections where each section may be with an individual encryption method and keyword. Some sections may be stored unencrypted." (Jaendel; page 3, last full paragraph).

Pre-Appeal Brief Request for Review

Application No. 09/803,082

Attorney Docket: 42390.P10217

The examiner has relied solely on Jaendel's Fig. 1 and the above-referenced portions of the summary of Jaendel's application (Jaendel; page 3) to support her *prima facie* rejection. To that end, the Examiner asserts that:

Jaendel discloses selection of packets in section 2 for encryption (Fig. 1). The partial encryption wherein the first section is not encrypted and the second section is encrypted (page 3, paragraph 3). Jaendel discloses the section 2 having a sequence header code and (Open Section, part 101 Fig. 1) occurring between consecutive packets (section 1 and the end of beginning of the next section). Final Office Action; page 3, second full paragraph.

This rejection is clearly erroneous for at least two reasons. First, Jaendel fails to disclose data packets having a sequence header code of a data packet sequence as recited in the claims. Second, Jaendel also fails to disclose encryption of at least every Nth packet between such data packets as recited in the claims.

Importantly, Jaendel's Fig. 1 and the associated text discloses that an image file may be partitioned into multiple "code sections" that may, or may not, be encrypted. (Jaendel; page 3, last full paragraph). While Jaendel discloses that each encrypted section may include a header defining the encryption mode employed in that section (Jaendel; page 5, last full paragraph), Jaendel fails to disclose that such headers are sequence header codes as claimed (e.g., I-frame sequence header codes).

Hence the Examiner has failed to establish a *prima facie* rejection in at least this respect.

Moreover, Jaendal fails to disclose selective encryption of at least every Nth data packet between consecutive data packets having a sequence header code. Assuming, solely for the sake of argument, that Jaendal discloses consecutive data packets having a sequence header code, Jaendel does not disclose selective encryption of at least every Nth data packet between consecutive data packets as claimed. Certainly, the Examiners reliance on Jaendel's Fig. 1 is in error: there is no indication in Fig. 1 of any mechanism or facility directly or impliedly disclosing these claim elements. Hence, the Examiner has also failed to make a *prima facie* rejection in at least this respect as well. Finally, while it might be argued that Jaendel's image sections can be thought of as "data packets," it cannot be reasonably argued that the header code in any one of Jaendel's encrypted image segments

Pre-Appeal Brief Request for Review

Application No. 09/803,082

Attorney Docket: 42390.P10217

specifies a following sequence of un-encrypted image segments that are then subjected to selective encryption.

In conclusion, Applicant maintains that the Examiner has failed to maintain a *prima facie* rejection under §103(a) and thus allowance of all the claims is respectfully requested.

Respectfully submitted,



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Dated: August 15, 2005

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